



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: WMP Security Services Co.; E.H. White &
Co.
File: B-232133; B-232133.2
Date: November 29, 1988

DIGEST

1. Agency properly adjusted offeror's proposed costs upwards to account for differences between offeror's proposed and forecasted general and administrative expense (G&A) rates where offeror did not specifically identify proposed G&A rate as a ceiling rate.
2. Contention that agency improperly found proposed awardee responsible to perform contract despite firm's lack of state licenses required to perform guard services is without merit; where solicitation does not require specific licenses, compliance with state and local licensing requirements is responsibility of contractor and is not a matter for the agency to resolve prior to award.
3. Relative weakness in offeror's proposal with respect to mission suitability and financial condition (where solicitation provided for consideration of financial condition and capability in the evaluation of technical proposals) provides a reasonable basis for selection of another more highly evaluated offeror.

DECISION

WMP Security Services Co. and E.H. White & Co., Inc., protest the proposed award of a contract to Quad S Company, under request for proposals (RFP) No. 2-32793 (PSD), issued by the National Aeronautics and Space Administration (NASA) for security support services at the Ames Research Center in California. WMP and White dispute NASA's evaluation of their respective proposals. WMP also questions NASA's affirmative determination of Quad's responsibility.

We deny the protests.

044027/137446

BACKGROUND

The solicitation contemplated the award of a cost-plus-fixed-fee contract to perform various security support services, including uniformed guard services, computer security, and staffing of a badge and decal office, a visitor center and a 24-hour duty office, for a base period of 2 years plus three 1-year option years. The solicitation provided for proposals to be evaluated upon four criteria of generally equal importance: (1) mission suitability (including understanding the requirement, key personnel, management plan, and corporate resources); (2) cost (including probable cost to the government, fees, and total cost); (3) experience and past performance; and (4) other factors (such as financial condition and capability).

Five firms responded to the solicitation, three of which, Quad, WMP, and White (White submitted two acceptable proposals), were included in the competitive range. After conducting discussions with these firms, NASA requested the submission of best and final offers (BAFOs). A source selection committee then conducted a final rating and ranking of the BAFOs for mission suitability, the only criterion that was point-scored. Quad was rated highest for this criterion (785 points), followed by WMP (699 points), and White (basic proposal 521 points; alternate proposal, 567 points). Additionally, Quad's cost proposal and financial condition were determined to be more advantageous to the government. In this regard, although both WMP and White proposed lower costs than Quad (WMP - \$6,459,569; White basic - \$7,121,802; White alternate - \$7,322,771; Quad - \$7,550,634), the agency found the probable cost to the government of WMP's (\$8,699,997) and White's (\$8,473,603 and \$8,676,684 (alternate)) proposals to be greater than the probable cost of Quad's proposal (\$7,899,666). Based upon the foregoing, NASA selected Quad for final negotiations. WMP's and White's protests to our Office were timely filed shortly after NASA's disclosure of this selection.

WMP'S PROTEST

WMP contends that NASA's cost realism analysis of its proposal was based on invalid assumptions and artificially inflated its proposed costs. WMP specifically objects to NASA's upward adjustments of its estimated direct labor costs and its proposed general and administrative (G&A) expenses.

When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance and their

proposed fees are not controlling since the estimates may not provide valid indications of final actual costs, which the government is required, within certain limits, to pay. See Federal Acquisition Regulation § 15.605(d); Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. The government's evaluation of estimated costs thus should be aimed at determining the extent to which the offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Because the contracting agency clearly is in the best position to make this cost realism determination, we will disturb such a determination only where it is shown to be unreasonable. See Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23.

NASA found WMP's proposed labor costs to be unreaistically low for the following three reasons: (1) WMP, contrary to standard industry practice, did not escalate its labor rates over the anticipated term of the contract to take into account annual salary increases; (2) WMP did not propose the RFP's required number of direct production labor hours; and (3) WMP, for the staff positions of security records specialist and security station specialist, did not propose wage rates in conformance with the minimum requirements set forth in the applicable Department of Labor (DOL) wage determination. As a result of these three discrepancies, NASA calculated that WMP underestimated its labor costs by approximately \$800,000, and adjusted WMP's proposed labor costs upwards accordingly.

WMP does not dispute NASA's findings that it did not escalate its wage rates or propose the required number of labor hours, nor does it challenge the reasonableness of NASA's adjustments to its labor costs to reflect these two factors--increases which comprised the great bulk of the \$800,000 added to its labor costs. WMP only questions the increase in its labor costs directly attributable to NASA's determination that its proposed wage rates for the positions of security records specialist and security station specialist did not conform to the applicable DOL wage determination. In this regard, NASA found that WMP misclassified these two positions, resulting in its proposed wage rates being below those required by the appropriate wage determination. Specifically, NASA considered the security records specialist to be a file clerk position, and the security station specialist to be a "guard II" position,

and it accordingly increased WMP's wage rates for these two positions by \$1.57 and \$1.48 per hour.

This adjustment had no bearing on the source selection and therefore need not be considered. In this regard, even if we agreed that NASA erred, all offerors would have been affected equally by this error and, accordingly, any such error would have had no impact on the relative ranking of evaluated cost proposals. See American Contract Services, Inc., B-225182, Feb. 24, 1987, 87-1 CPD ¶ 203. Moreover, our conclusion would be the same even had WMP's proposal been the only one improperly evaluated in this regard. The dollar value of this error over the entire term of the contract would be approximately \$40,000 (a decrease of \$1.57 and \$1.48 per hour for 5 years of work), an amount far less than the \$800,000 difference between the evaluated costs of the Quad and WMP proposals.

NASA also found that WMP's proposed G&A rate of 4 percent--a rate WPM apparently proposed to be competitive with other offerors--bore no relationship to the actual costs WMP would incur in performing the contract. To account for this discrepancy, NASA adjusted WMP's proposed costs upwards by an additional \$1.2 million. Most of this amount (\$1 million) represented the difference between WMP's proposed and forecasted G&A rates, while the remainder reflected an increase in WMP's G&A base due to the three direct labor cost adjustments discussed above.

While not challenging the validity of NASA's findings, WMP argues that NASA nevertheless was precluded from adjusting its proposed costs to take into account the differential between its proposed and forecasted G&A levels. WMP maintains that the G&A rate contained in its offer was intended to be a ceiling rate, thus limiting the recoupment of G&A costs under the terms of the contract to the stated 4 percent level. These intentions notwithstanding, however, WMP admits that it did not identify the G&A rate as a ceiling rate, and we have examined WMP's proposal and find no indication that the 4 percent G&A rate was intended as a ceiling. We therefore cannot conclude that NASA misconstrued WMP's proposed G&A rate by considering it to be an estimated level subject to change during the course of the contract, see Advanced Electro Magnetics, Inc., B-208271, Apr. 5, 1983, 83-1 CPD ¶ 360 (proposals are to be evaluated on their own merits), and find nothing improper in NASA's upward adjustment of WMP's G&A costs.

WMP also maintains that at the time for submission of initial proposals, Quad, the proposed awardee, was not licensed to provide guard services in California, and

therefore should have been found nonresponsible because at that time it could not legally have performed the contract. Where, as here, the solicitation requires in general terms only that the contractor have all necessary licenses and permits, such a contention, even if true, would provide no basis on which the agency could have rejected the awardee as nonresponsible; compliance with state licensing requirements under these circumstances is simply a matter to be resolved by the contractor and the relevant state and local authorities. Behavioral Systems Southwest, B-213065, Oct. 11, 1983, 83-2 CPD ¶ 446. In any event, Quad established prior to award that it possesses the pertinent state licenses alluded to by WMP.

WHITE'S PROTEST

White, the incumbent contractor for a portion of the required services, questions the evaluation of both its basic and alternate proposals under the mission suitability criterion. White primarily argues that NASA applied unstated requirements in evaluating its proposed personnel. In this regard, the solicitation provided for evaluation of the education, experience and appropriateness of proposed key personnel, and required offerors to state their rationale for the selection of individuals as key personnel, and to supply resumes and sufficient information to permit the evaluation of their qualifications. This key personnel subcriterion was the second most important aspect of mission suitability (350 of 1000 available mission suitability points). Both of White's proposals were found to contain two major weaknesses resulting in their receiving approximately one-third the maximum points available for this subcriterion. Specifically, White's proposed operations security specialist, while considered to have a very strong background in physical security, was found to lack the experience in operations and ADP security required for that position. Similarly, NASA found that White's proposed deputy project manager, while having limited management experience, lacked the breadth of supervisory experience necessary for that position, which requires a background in all facets of the facility's security operations.

In reviewing protests against allegedly improper technical evaluations, our Office will not substitute its judgment for that of the contracting agency, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. See ORI, Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266.

Although, as noted by White, the solicitation does not identify express qualifications for either of the two positions in question, this lack of specificity did not preclude NASA from considering whether the proposed personnel had relevant experience in the exact positions to be filled. Consideration of such experience, we think, clearly was encompassed by the key personnel evaluation subcriterion, which did instruct offerors to submit resumes to demonstrate the education and experience of proposed personnel with respect to requirements set forth in the statement of work. NASA's preference for such experience, which it believes will best ensure secure operations at the Ames Research Center, as compared to general experience in physical security and management, and its downgrading of White for failure to propose personnel with specific experience in the positions to be filled, therefore was not unreasonable. See Sage Diagnostics, B-222427, July 21, 1986, 86-2 CPD ¶ 85.

White also maintains that NASA incorrectly found that its on-site supervisors lacked sufficient authority to resolve problems requiring immediate attention. Specifically, NASA considered White's proposed organizational structure (identical for both proposals) overwrought with excessive plans for resolving problems; NASA concluded that there would be an inability of head supervisors to address independently concerns arising under this approach, resulting in reduced effectiveness and a lack of sufficient time for resolution of problems. White does not take issue with these findings, per se, but maintains that its organizational structure was efficient because the designated project manager would have full authority and responsibility over all contract staff and would be responsible for all administrative requirements without having to consult with corporate headquarters for guidance.

We find no basis for questioning NASA's conclusion; that is, we do not believe NASA was unreasonable in not sharing the protester's view that delegation of contract administration and management responsibilities from corporate headquarters to a project manager guarantees an effective and efficient organizational structure. Rather, we think NASA reasonably could conclude that, depending on the scope and complexity of services to be performed, additional responsive management staff may be required to ensure smooth operation at each work level. NASA found White's proposal lacking in this area, specifically with respect to the ability of lead supervisors to give prompt attention to problems as they may arise without first seeking approval from the project manager. Again, we find no basis for disturbing this conclusion.

White further contends that the agency disregarded its incumbency when considering the adequacy of its orientation and training proposals; NASA found that White did not provide specific orientation and training plans as required for each particular security function. Because of this and other perceived weaknesses, White's proposals received approximately one-half of the points available for the staffing evaluation subcriterion. We have examined this portion of White's proposal, however, and find that White's orientation and training plans indeed were lacking in specificity and generally could be described as vague. For example, for the visitor/receptionist security office, White simply stated that it would submit a training and orientation plan within 15 days after award. White's proposed plans for the other security areas were equally lacking in detail.

White suggests that NASA should have evaluated its proposed orientation and training plans in light of its status as the incumbent, and its intention to keep its existing workforce. There is no indication that NASA failed to consider these factors; NASA apparently found that such factors did not excuse White from submitting the detailed training and orientation plans required by the solicitation for all offerors. In this regard, there is no basis for favoring a firm with presumptions based upon prior performance--all offerors must demonstrate their capabilities in their proposals. See Del-Jen, Inc., B-216589, Aug. 1, 1985, 85-2 CPD ¶ 111.

Finally, White challenges NASA's cost analysis, seemingly asserting that the agency's inflated estimate of the probable cost of accepting its proposal reflected bias in favor of the awardee, Quad. The most significant increase in White's evaluated probable cost (approximately \$800,000) --the only adjustment actually challenged by White--resulted from NASA's rejection of White's proposed 7.5 percent ceiling on reimbursement for G&A costs. NASA calculated that White would incur an annual operating loss at this level of reimbursement. To offset this annual loss, NASA adjusted White's G&A rate on the procurement to 20 percent, a rate NASA determined would enable White to break even for the year on all of its work.

We find nothing improper with this adjustment. See E.H. White & Co., B-227122.3 et al., July 13, 1988, 88-2 CPD ¶ 41. The record contains no evidence confirming White's speculation that NASA was driven by bias in favor of Quad in evaluating White's cost proposal; it appears that NASA followed established procedures when conducting this

evaluation. See Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43. Although NASA did not perform a similar break-even analysis on Quad, there is no indication that this decision was based on improper motivations on the part of agency personnel; NASA simply determined that such a break-even analysis was not needed, as it found that Quad did not face the same financial difficulties as those confronting White.

White's apparent argument that the upward adjustment of its G&A rate was excessive due to NASA's failure to take into account the recent leasing of a portion of its home office space is without merit. White has not shown that the substantial G&A reductions it anticipates from this transaction will be realized, or that the reductions, if considered, would have offset the considerable evaluated cost advantage enjoyed by Quad with respect to White's basic and alternate proposals. Even had White demonstrated that this leasing arrangement would have left its proposal no more costly than Quad's, Quad still would have been selected for award on the strength of its superior evaluated technical proposal.

The protest is denied.



James F. Hinchman
General Counsel